**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**INCOME TAX APPEAL NO.324 OF 2007**

The Commissioner of Income-tax
Aayakar Bhavan, Near Holi Cross
High School, Cantonment,Aurangabad. ..Appellant.

V/s.

Ambejogai Sahakari Sakhar Karkhana
Ltd. Ambejogai, Dist. Beed. ..Respondent.

Mr.B.M.Chatterjee with Mrs.P.P.Bhosale for appellant.

Mr.S.N.Inamdar with A.K.Jasani for respondent.

**CORAM : F.I.REBELLO AND**
**J.P.DEVADHAR, JJ.**

**DATED : 17TH SEPTEMBER, 2007.**

**ORAL JUDGMENT (PER J.P.DEVADHAR, J.)**

1. This appeal is filed by Commissioner of Income Tax under section 260 A of the Income Tax Act, 1961 against the order of the ITAT dated 16/12/2005 relating to the assessment year 1990-91.

2. The appeal is admitted on the following question of law:-

> "Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that advances paid to harvesting and transporting contractors was in the nature of business interest of the assessee society and thereby deleting the disallowance of interest part, even though such advance was not made in the normal course of business and was made without any specific contractual obligation and out of borrowings on which

assessee is giving huge interest to financial institutions. Thus, it was nothing but a diversion of borrowed funds for non business purpose ? "

3. Counsel on both the sides agree that the aforesaid question of law is answered against the revenue and in favour of the assessee by the decision of this Court in the case of Commissioner of Income Tax V/s. Samarth Sahakari Sakhar Karkhana Ltd. in Income Tax Appeal No. 273 of 2007 decided on 17th September, 2007. Accordingly, the question is answered in favour of the assessee and against the revenue.

4. Appeal disposed of accordingly with no order as to costs.

**(F.I.REBELLO, J.)**

**(J.P.DEVADHAR, J.)**